International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

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Lester Heltzer Executive Secretary National Labor Relations Board 1099 14th Street NW Washington, DC. 20570-0001

RE: Reply to the Region response to Union request for Board for review on Cases; Hanson Aggregates BMC, Inc. *and* International Union of Operating Engineers, Local 542, AFL CIO. Cases 4–CA–33330, 4–CA–33508, 4–CA–33547, 4–CA–34290, 4–CA–34362, 4–CA–34363, and 4–CA–34378

In response to the Region 4 reply on my request of the Board for review and enforcement of a Board Order of September 2008 of the above Caption Cases, I am appalled as a Union Representative, tax payer and one who labors, on the Region mistruths, distortion of facts and overall handling of this Compliance.

Truly, with a reply like this from a Region of the National Labor Relations Board, I can understand on how the American workers can be abused by Attorneys crafty misinterpretation of Fact, in the system in which they are held under these guidelines.

The Region, acting for General Counsel, has failed miserably in enforcing the Law and labels themselves in their reply, as a third party of the Law rather than an enforcement Agency which they are. "The Region never offered to act as the Union's agent with respect to fulfillment of this legal obligation". There has never been a request made by the Union for the Region to act as an 'Agent'. The only request to the Region by the Union was to do their duty! The Union has provided the Region with volumes of bargaining notes and letters which the employer has thumbed their nose to the Union from September 30th 2008 and beyond, each time the Union has asked the employer to comply with the Board Order. And again, the Union is oblivious of what the Respondent has done to comply with any of the Board Order.

Example: while the Region implies a Posting of Notice was place at the Employers facility, did the Region ever inspect this Posting???? I believe not, and until I received the reply from the Region stating this, not one employee has mentioned or informed me about

any posting from the NLRB! The Employer also been told to provide a copy of all postings or any type of information to our unit to the Union within 24hours of being posted or distributed. Simply, what the Region cites as being done, hasn't!

The Region further fails to inform the Board that when Charges were found in 2005 against this employer and a Posting was posted, we then had a steward onsite who informed us and the Region, that the employer posted the Posting, 2 feet off the ground behind a Minimum hourly wage poster. This was only found by our steward after I asked him to check to see if the Posting had been posted in 2005 which after a week he was unaware. Maybe this is what the Region feels is an adequate way to notify the employees and to confer that the employer is in compliance.

The Region admits that the Board Order of 2008 requires no written demand from the Union, although, places one on the union because of 'unique circumstances'. There are no 'unique circumstances' here! And the Regional Director is not the Board and should not add to the Order as it was written. The crafting of the Board in 2008 was clean and did not cite specific items to rescind. The Board through its wisdom knew not what the employer may have changed and therefore left it vague as in... (b) On request, rescind the changes to terms and conditions of employment unilaterally implemented on October 24, 2005, and January 1, 2006.) The Union used the Board language by insisting repeatedly all changes be rescind since October 2005! The employer was notified as the Region admits from day one to restore all conditions to 2005 as prescribed in the Board Order. But both the Region and the Employer play this charade game of not understanding the Union request, although, made in the same text as the Board! Merely, what has the Union cited since 2008 not to rescind to employer? That answer can't be found in any Notes, or letters because the Union has been specific to all Changes be rescinded!

What is unique about the word 'all'? This text to rescind all changes is further cited numerous times in the Region reply and mentions three times this was done by the <u>Union in writing!</u> The Regional Director last admission of the union doing this is in a letter of November 2011 by the Union, but then places the union demand in a 'vacuum' and ignores the Board Order and the Union position. While the Regional Director cites a letter giving some specifics of changes the Union made to the Employer on recession of changes, the Region omits the nexus within the letter of two words 'not all inclusive' when speaking on items the employer was not clear on. Wage and Skill Points were clear by the employer and specifically asked by the employer at the table when the Union wanted this done which can be found in Notes by the Union and the Employer. And that answer was today!

It is important to Note three things just on this issue:

- 1. When the union sent the letter to the Employer on November 15th 2011 informing them that the specific change 'Wages' had not been rescinded, the Employer replied in two days to the Union that they felt my request was not made in 'good faith' and would reply later to my demand to rescind wages. THIS NEVER HAPPENED! But the Region still closed compliance. WHY? Apparently, whether the demand was in writing or verbal, the employer did what they wanted and the Region applauded their unlawful actions.
- 2. The Union notified the Region Compliance Officer of both these Letters on November 30th. Compliance Officer Shane Thurman then stated it may be 'too late' now, notifying the employer in writing. **Has the Compliance Officer ever been question on this**

regard? And with this open information by the Employer, why would the Region close compliance? This is further convoluted in the Memo of July 2010 provide by the Region(Exhibit 15) of Compliance Officer Hollo with her indicating it may be too late! Simply, who has their facts correct here? Hollo in July of 2010 or Thurman in November 2011? Purely, someone did not do their job at the Region!

3. Three years and two months after the Board Order was issued, and two year after the Federal Court enforced the Board Order, the Region places shotgun tactics from October 2011 to November to close Compliance, this is beyond nonsensical!

In the Region response, it is indicated that the Union only objection is the recession of wages and restoration of skill points, although, the Union Appeal to General Counsel begins with the Union is still not aware of all things which were restored except for the Pension and that is not clear. Never has the Employer given a clean list of what and when changes were made from 2008 to December of 2011 or anytime after. Each time the Union has asked the employer what have they complied, the Employer response has been, 'we will comply as directed by the Region'. These statements can be found in the employers Notes, which the Region has been given along with the Union Notes. Why has the Employers Notes not been given to the Board for review? It's painfully apparent that the Notes from each Party clearly indicate to restore wages to 2005 and Skill Points as directed and more specifically, within the context of the Board Order of 2008. The Region is more clear on the Union demand than the Sun coming out tomorrow, as the same as the Employer, but foregoes their duty under the Act.

In **Exhibit 14** of the Region response, Bankard email to Board Agent Hollo of January 2010, what is unclear to the Region or General Counsel of not restoring everything that was changed in 2005 unlawfully including wages? The conclusion of that email in 2010 states specifically on restoration of wages, but again, is ignored by an Officer of the Court!

Even after that email, Board Agent Hollo has Bankard come in to give an Affidavit in this regard on skill points and wages so there is no uncertainty of what the union is seeking. But again nothing is done by the Region!

I find it ever peculiar of the Region **Exhibit 15** Memo that now wage recession may be to late to be enacted, but over a year later, the Regional Director wants the Union to put this in writing. Seems this alone should show the Region cannot keep tabs with their fable. Truly, what is going on at the Region? In July 2010 the Region feels the time for wage rescission may have past, but over a year later, the Region wants the Union to place wage recession in writing.

The Clear Understanding of the Region on the Demand by the Union

I further find no Statement or Memo by Board Agent Hollo by the employer Counsel John Nadler when she told him that the Union wanted wages restored in 2010. Nadler, told her specifically, the employer would never do this! Where is this Memo at? Why has this not been brought to the General Counsel attention or submitted to the Board for review? Nadler or the Respondent clearly spits in the Eye of the Order of 2008 and Court enforcement of 2009 when the Acting Agency of the Government informs them to comply! This should have been sent to Contempt, not left in Compliance with this knowledge or more so the refusal of the employer to comply with the Law!

While the Region can degrade me because I am not an Attorney with crafty language and Memos fabricated weeks after an event occur which the Region provides, the Union out of frustration had their Counsel contact Attorney Hollo which he gave a directive of wage recession to her, (**Exhibit 15**) but again, the Region does nothing about it and then states to the Board that the Union request of review is '*meritless*'. 'Meritless' can be found by the Region of not enforcing the Board Order or the Court Order. Basically, the Region finds a union agents letters and notes unclear to force compliance but then does nothing with a directive from some of the same cloth.

While the Region believes that the unlawfully wage increases out weighted skill points, the Region omits or does not clarify, the employer analysis only goes from November 2009 back to January 2006. WHAT ABOUT DECEMBER 2009 TO TODAY!!!!!!! While the Region does admit that only a few lost income from not gaining skill points and one was paid over \$10,000 in lost of wages for not receiving skill points, regardless of his wage increase he received, how does the Region close compliance 2 years and 1 month later without further correction on this one individual and others? Furthermore, the Region never estimated or took into account Skill Points not accounted for the 'Red Circle employees who only received a onetime check. Their wages have been frozen since 2004! Simply, the Employer has not increased wages since 2007 a factor not aware to the Board of 2008 when their decision was written. That said, the Region takes the employer data of November 2009 compiles a back wage calculation for those that would have received more in skill points than the wage increase they received, and ends this calculation in November 2009! Ludicrous?

With the Region evidence in **Exhibit 22** and knowledge that employees whether one or all were shorted wages and no further correction made from 2009 to present, no Compliance has been met! Simply, those that would have received higher wages in Skill Points pay needs to be corrected from December 2009 forward. **AND WHAT ABOUT THE OTHERS Whose wages have been stagnated since 2007 and 2004!**

To conclude:

The Union is aware of the wages not being restored along with the skill points. The Union is further aware that Job Categories have not been replaced as they were in 2005, along with Company Housing that was given out from 2006 to present to any employee of the Company choosing along with the Dental Holiday as mention in the Board Order never being restored, and as prescribed in the Order of 2008. And who knows what else!

The Region has further closed compliance with 04-CA-069822 of a merit finding against the employer changing condition in wages in <u>August of 2011</u>. With that finding alone, the employer hands were not clean and no compliance should have been met. <u>And time of Posting' should have not been started until that Charge meets a remedy!</u> That said, that Case alone, should remand these Cases back to the General Counsel.

Respectfully submitted,

Frank Bankard